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INTERNATIONAL COMPETITION NETWORK CONFERENCE ADOPTS RECOMMENDED PRACTICES TO IMPROVE MERGER REVIEW PROCESSES, ESTABLISHES CARTEL WORKING GROUP

Assistant Attorney General R. Hewitt Pate Promotes Antitrust Convergence at Seoul Conference

WASHINGTON, D.C. – At the conclusion of the International Competition Network's (ICN) conference held in Seoul, South Korea, antitrust members adopted four additional Recommended Practices for merger notification procedures, designed to improve enforcement agencies' merger review processes and reduce unnecessary burdens on both agencies and merging parties, the Department of Justice announced. The ICN also created a new cartel working group.

At the conference, held April 21-22, 2004, senior antitrust officials from nearly 50 jurisdictions gathered to promote convergence in multijurisdictional merger review, to advance competition law enforcement in developing countries, and to study the role of competition enforcement in regulated sectors. Representatives of antitrust agencies were joined by international organizations and more than 50 non-governmental advisors, including representatives of the legal, business, economic, consumer and academic communities.

R. Hewitt Pate, Assistant Attorney General in charge of the Justice Department's Antitrust Division, and Timothy J. Muris, Chairman of the Federal Trade Commission, addressed the participants via video conference at the Seoul Competition Forum held on April 20, 2004.

"ICN's work over the past year – highlighted by the growing consensus around sound merger procedures and the commitment to promote increased cooperation in the fight against hardcore cartels – demonstrates the value of an antitrust-focused multilateral forum," Pate said.

In October 2001, the Department of Justice and the Federal Trade Commission joined with antitrust agencies from 13 other jurisdictions around the world (Australia, Canada, European Union, France, Germany, Israel, Italy, Japan, Korea, Mexico, South Africa, United Kingdom and Zambia) to create the ICN. The ICN now includes nearly 90 member agencies from nearly 80 jurisdictions. The ICN has two main goals: 1) to provide support for new antitrust agencies both in enforcing their laws and in building strong competition cultures in their countries, and 2) to promote greater procedural and substantive convergence among antitrust authorities on sound competition principles.

The conference focused on the recent work of three ICN working groups: the Merger Working Group, the Competition Policy Implementation Working Group, and the Antitrust Enforcement in Regulated Sectors Working Group. In addition to evaluating its ongoing work, the ICN established a new Cartel Working Group. This new working group will contribute to the ICN's important mission of assisting member agencies in providing more effective antitrust enforcement on behalf of the consumers they serve. Deputy Assistant Attorney General James Griffin will serve as co-chair of a subgroup of the Cartel Working Group.

Over the past year, ICN has focused on member implementation of its recommendations, including an assessment of its efforts at the Seoul conference.

"ICN strives for implementation through education and by producing recommendations based upon the best perspectives from public and private sectors," said Pate. "We are encouraged that ICN members are combining their initiatives with implementation."

After reviewing the work of the Merger Working Group, which is chaired by Deputy Assistant Attorney General Makan Delrahim, ICN members adopted four new Recommended Practices. The new Recommended Practices address:

- *Conduct of Merger Investigations.* The conduct of merger investigations should promote an effective, efficient, transparent and predictable merger review process. Agencies should include opportunities for discussions between the agency and merging parties; provide merging parties with an explanation of competitive concerns; where appropriate, adopt procedures to ensure that the investigation is completed without undue delay; avoid imposing unnecessary costs and burdens on merging parties and third parties; and comply with applicable legal privileges and confidentiality practices.
- *Procedural Fairness.* Procedural fairness should be afforded to merging parties and third parties with a legitimate interest in the merger. In this context, agencies should provide merging parties with sufficient and timely information on the competitive concerns that form the basis for a proposed adverse decision, parties should be given the opportunity to respond to such concerns, third parties should be allowed to express their views, and there should be an opportunity for timely review of agency decisions.
- *Confidentiality.* Confidential information received during a merger investigation should be subject to appropriate confidentiality protections. Agencies should promote transparency of their confidentiality laws and practices, and avoid unnecessary public disclosure of confidential information in public announcements and legal proceedings.
- *Interagency Coordination.* Competition agencies should seek to coordinate reviews that raise competitive issues of common concern. Coordination should

follow applicable laws and be tailored to the particular transaction. Agencies should encourage merging party cooperation and seek to avoid inconsistency with remedies in other reviewing jurisdictions.

The ICN members previously adopted eight Guiding Principles and seven Recommended Practices. The Principles and Practices are non-binding and governments are implementing them voluntarily, as appropriate. The Merger Working Group also presented detailed papers focused on improving investigative techniques, and the ICN approved future work for the analytical framework subgroup on merger guidelines and remedies.

Antitrust officials at the conference also discussed antitrust enforcement in regulated industries such as telecommunications, electricity, and banking. The Antitrust Enforcement in Regulated Sectors Working Group presented a comprehensive report based on contributions from participating members on the effects regulation can have on the application of antitrust law, antitrust enforcement experiences in regulated sectors, and the interaction between antitrust authorities and regulatory agencies. Through examples of day to day interaction on specific cases, the report demonstrated the need for cooperation between antitrust agencies and regulators when their enforcement responsibilities may overlap.

The Competition Policy Implementation Working Group addressed ICN initiatives to assist new antitrust agencies in developing economies. The group's work presented at Seoul included a report of successful case studies aimed at improving the effectiveness of competition advocacy in developing and transition economies and a methodology for examining ways to enhance the stature of competition authorities with consumers. Results from a workshop in Paris in February of this year that brought together donors and recipients identified means of strengthening cooperation between the two.

All ICN documents are available at www.internationalcompetitionnetwork.org.

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